

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SILVIA GONZALEZ SILVA,

11 Plaintiff,

12 v.

13 SAMAN ARABI,

14 Defendant.

CASE NO. C14-0049-JCC

ORDER

15 Plaintiffs move for appointment of counsel to represent them in this action. (Dkt. No. 5.)  
16 Having considered the papers and the entire record, the Court denies the motion for appointment  
17 of counsel.

18 Generally, a person has no right to counsel in civil actions. *See Campbell v. Burt*, 141  
19 F.3d 927, 931 (9th Cir. 1998). A court has discretion to appoint counsel for indigent civil  
20 litigants pursuant to 28 U.S.C. § 1915(e)(1), but an appointment of counsel should only be  
21 granted under “exceptional circumstances.” *Agyeman v. Corrections Corp. of Am.*, 390 F.3d  
22 1101, 1103 (9th Cir. 2004). When determining whether “exceptional circumstances” exist, the  
23 Court considers “the likelihood of success on the merits as well as the ability of the [plaintiff] to  
24 articulate [the] claims *pro se* in light of the complexity of the legal issues involved.” *Weygandt*  
25 *v. Look*, 718 F.2d 952, 954 (9th Cir.1983).

1       Here, the Court is unconvinced of Plaintiffs' likelihood of success on the merits. This  
 2 lawsuit arises from a car accident involving Plaintiffs' husband and father, Ivan Nunez. Mr.  
 3 Nunez was severely injured and was taken to Harborview Medical Center ("Harborview"). (Dkt.  
 4 No. 4.) At Harborview, Mr. Nunez was removed from life support, allegedly in accordance with  
 5 a policy that allows life support to be removed without input from any relative. (*Id.* at 4.)  
 6 Plaintiffs now sue Harborview and a number of individual doctors for \$7,000,000 in damages.  
 7 (*Id.* at 2.) The complaint appears to be based solely on the policy or custom of the hospital, and  
 8 the individual defendants' adherence to that policy.

9       Plaintiffs suggest that this Court has jurisdiction because there is a federal question. At  
 10 one point, Plaintiffs cite 42 U.S.C. § 1983. But as this court has recognized, neither Harborview  
 11 (a state entity) nor the individual doctors in their official capacities are "persons" under § 1983  
 12 who can be sued for damages. *See Tillisy v. Baird*, No. 12-2055-TSZ, 2013 WL 7017957 at \*2  
 13 (W.D. Wash. Nov. 25, 2013) (citing *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989)).  
 14 To the extent that Plaintiff is suing individual doctors in their personal capacities, they will be  
 15 able to raise the defense of qualified immunity. *See Nicolaas v. Pace*, No. C12-1357-RAJ, 2013  
 16 WL 4519603 at \*4 (W.D. Wash. Aug. 26, 2013) ("Defendants sued in their personal capacity for  
 17 violating § 1983 may also invoke qualified immunity, which protects some § 1983 defendants  
 18 'from liability for civil damages insofar as their conduct does not violate clearly established  
 19 statutory or constitutional rights of which a reasonable person would have known.'").  
 20 Accordingly, the Court concludes that the likelihood of success is low if this case is intended as a  
 21 § 1983 action. On the other hand, if Plaintiffs intend to bring this as a wrongful-death action, it  
 22 appears unlikely that this Court has jurisdiction over a state-law claim.

23       Plaintiffs allege that three reasons justify appointment of counsel: (1) the relevant area of  
 24 law requires specific knowledge; (2) this case may affect the rights of others; and (3) no party  
 25 will be prejudiced by the appointment of counsel. (Dkt. No. 5.) The Court finds that these  
 26 reasons do not constitute exceptional circumstances, despite the undeniable importance and

1 emotional nature of this case for Plaintiffs. A ruling in this case would have no exceptionally  
2 broad application, and Plaintiffs have shown proficiency in articulating claims of deliberate  
3 indifference to serious medical needs and denial of due process. Plaintiffs' motion for  
4 appointment of counsel (Dkt. 23) is therefore denied.

5 DATED this 1st day of May 2014.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE